the jurisdictional power of a foreign court has been that otherwise a citizen of one country could not avoid the effect of a judgment rendered by such court, when same is brought up in a proceeding in another court, without going back into such foreign jurisdiction, and there have the same reversed. This has never been required by English or American courts. Thus when Justice Lindley asserts that the errors of the Florida court should have been rectified by impeachment in Florida, he seeks to invoke a duty never before recognized by English courts.

RIGHT TO ENJOYMENT OF STREAM—PERCOLATING WATERS.

The Court of Appeals of New York extends the rights of riparian owners in *Smith* v. *Brooklyn*, 54 N. E. 787. Smith owned land on which there was and had been a pond and natural water-course. The city of Brooklyn, to secure water for municipal purposes, established, on land of its own, at a distance of about 2,400 feet, an aqueduct and reservoir, which it supplied with water by means of a conduit and a system of wells, pumped by powerful steam-suction pumps. When the conduit was laid the stream failed perceptibly, and when the pumping station was put in operation disappeared. Both stream and pond have remained dry ever since. The jury found that the acts of the defendant had caused the disappearance of the pond and water-course. In final affirmance, the Court of Appeals, all concurring and speaking by Gray, J., says: "The right of this plaintiff to the enjoyment of his running stream and to his pond was absolute. The diversion of the water therefrom was established as a fact by the verdict, and the right of the former to maintain the action for the recovery of damages was clear."

The doctrine that the owner of land has it to the sky and the lowest depths was very clearly modified as to water-courses in *Shury* v. *Piggott*, 3 Bust. 339, where Whitlock, J., says: "Ways or commons * * * may become extinct by unity of possession, because the greater benefit shall drown the less. * * * but a water-course doth begin *ex jure naturæ*, and cannot be averted." But *Acton* v. *Blundell*, 12 M. & W. 324, denied the right or interest of the owner of land, through which water flowed in a subterraneous course, sufficient to enable him to bring action for its diversion by an adjacent owner. Where, however, these subterranean waters are the principal or only source of supply of a water-course on his land, what are the rights of the parties? *Greenleaf* v. *Francis*, 18 Pick 117, held the right of the first owner paramount, "unless he was actuated by a mere malicious intent to deprive his neighbor of the water without a benefit to himself." *Parker* v. *B. & M. R.*, 3 Cush. 107. The next distinction made was between a subterranean flow of water so well defined as to constitute a regular and constant stream and percolations. The former were capable of a right of enjoyment in the person on whose land they issued as a spring and could not be diverted. *Smith* v. *Adams*, 6 Paige 435. But the owner of land had no right of action against a neighboring owner who diverted, without malice or negligence, the mere percolations of his own land, even though a spring was destroyed thereby. *Wheatly* v. *Baugh*, 25 Pa. St. 528. It does not follow that each land owner has the entire and unqualified ownership of all water found in his soil, not gathered into natural water-courses in the common acceptation of that term. The rights of each land-owner being similar, and his enjoyment dependent upon the action of other land-owners, these rights must be valueless unless exercised with reference to each other, and are correlative. Each is restricted, therefore, to a reasonable exercise of his own rights and a reasonable use of his own property. *Bassett* v. *Salisbury Mfg. Co.*, 43 N. H. 569.

This was the basis of the decision of Hatch, J. (in 18 App. Div. Rep. 341), and we think it a sound one. The maxim, *Sic utere uo.*, etc., applied to the facts, harmonizes the American cases. The English cases refuse to apply this doctrine to percolating waters where the rights of riparian owners in a defined water-course are not involved. *Chaseman* v. *Richards*, 7 H. L. 349; *Bradford* v. *Pickles*, 1895 Appeal Cases 587.

Civilization must move from absolute individual rights and absolute ownership to correlative rights and ownership reasonably restricted. While, therefore, we approve the decision of the case upon the facts found by the verdict, we question the propriety of stating an "absolute right of enjoyment" in a water-course, unless it is used in the sense of vested or individual. *U. S.* v. *Northway*, 17 Fed. Rep. 65. The plaintiff had rights in his stream, the city of Brooklyn had rights in the percolations of its land. When it was established that these percolations fed almost exclusively the plaintiff's stream, their rights became correlative and the city was bound to show that its acts were a reasonable use of its land with due care.

GEOGRAPHICAL NAMES AS TRADE-MARKS.

In *Canal Co.* v. *Clark*, 13 Wall. 311, we find the general law as to the use of geographical names for trade-marks laid down that no one can apply the name of a geographical district to a well known article of commerce, and obtain thereby such an exclusive right to the application as to prevent others inhabiting the district or dealing in similar articles coming from the district, from truthfully using the same designation. Until lately no exception to this general rule has been recognized as established law in this country. The United States Circuit Court for the Southern District of New York, however, has recently handed down a decision in the case of *American Waltham Watch Co.* v. *Sandman*, 96 Fed. 330, that considerably modifies the views formerly held on this point. In this case the defendant began the manufacture of watches in Waltham under the name of "Columbia Watch Company" and stamped his watches with the name of this fictitious corporation and the words, "Waltham, Mass." His object in locating at this place was for the avowed purpose of using the name "Waltham" in order that he might thereby reap the benefits of the labor of the original Waltham Watch Company, who had succeeded in making the "Waltham watch" known the world over. In a suit in equity for an accounting and an injunction, a decree was entered in favor of the plaintiff. The court in reaching this conclusion recognizes that a geographical name may acquire a secondary meaning that entitles it to the protection of the law. By long use and association with the manufacture of an article it may come to be a means of designating that article and as such acquire the value and invoke the protection accorded to a trade-mark. We find this point arising in the case of *Sexio* v. *Provezende*, L. R. I. Ch. 192, but not until the case of *Montgomery* v. *Thompson*, 1891 App. Cases 217, was it very fully discussed. The Massachusetts Supreme Court followed this latter case in *Waltham Watch Co.* v. *United States Watch Co.*, 53 N. E. 141, and the reasoning there of Judges Knowlton and Holmes seems to have had great influence upon the circuit court in the present case. The case before us is important as tending to establish a line between meritorious claims that have come into conflict. The principle that one can not appropriate a geographical name as against any one else manufacturing a similar article in the same place is a just one. But should even a right as strong as this be allowed to cover an intentional fraud on the public? It is the protection of the public that is aimed at. Not being in a favorable position to protect itself, the court considers its protection a duty incumbent upon it, and that a greater injustice would be done if it did not afford such protection than if it merely set limits upon a well established rule of law. The element of intentional fraud upon the public is the feature that the courts have grasped in order to set this limit, and a stronger one it would be hard to